

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

Abler v. Atkinson

Abler · No. 25-CV-25537-ELFENBEIN · Decided December 4, 2025

SUMMARY

The United States District Court for the Southern District of Florida sua sponte determines that venue is improper in the Southern District because the plaintiff resides in the Middle District of Florida and the complaint does not allege that substantial events occurred in the Southern District. The court finds that venue and personal jurisdiction appear potentially proper in either the Middle District of Florida or the Eastern District of California, but transfers the case to the Middle District of Florida under 28 U.S.C. § 1406(a), based on the plaintiff's apparent intended forum. The Southern District clerk is directed to close the case and mail the order to the pro se plaintiff.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Marty Fulg u eira Elfenbein
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	December 4, 2025
DOCKET	25-CV-25537-ELFENBEIN
DISPOSITION	transferred
PROCEDURAL POSTURE	On sua sponte review of the complaint and record, the Southern District of Florida determined that venue was improper and transferred the case under 28 U.S.C. § 1406(a) to the Middle District of Florida.
STANDARD OF REVIEW	De novo review of venue based on the allegations in the complaint; the court also conducted a sua sponte examination of defective venue under 28 U.S.C. § 1406(a).
PRECEDENTIAL VALUE	unpublished district court order; limited persuasive value
PARTIES	Stanley Abler v. Megan Atkinson

TOPICS

- venue
- personal jurisdiction
- civil procedure
- ada / disability
- civil rights

PRACTICE AREAS

civil procedure

venue

personal jurisdiction

civil rights

disability law

QUESTIONS PRESENTED

1. Whether venue was proper in the Southern District of Florida under 28 U.S.C. § 1391.
2. Whether the court could raise improper venue sua sponte despite the defendant's apparent failure to object.
3. Whether the action should be dismissed or transferred under 28 U.S.C. § 1406(a), and which district was an appropriate transferee forum.

HOLDINGS

1. Venue was improper in the Southern District of Florida because the plaintiff's residence alone does not establish venue, and the complaint did not allege that the defendant resided there or that a substantial part of the events or omissions giving rise to the claims occurred there.
2. In the absence of waiver, a district court may raise defective venue on its own motion.
3. The case should be transferred, rather than dismissed, to the Middle District of Florida because that district appeared to be a proper and more appropriate forum based on the plaintiff's residence and alleged injury there.

KEY QUOTATIONS

“Only the events that directly give rise to a claim are relevant.”

“And of the places where the events have taken place, only those locations hosting a ‘substantial part’ of the events are to be considered.”

“the ‘interests of justice generally favor transferring a case to the appropriate judicial district rather than dismissing it.’”

FACTUAL BACKGROUND

Abler alleged that he resided in Melbourne, Florida, and that Atkinson resided in Redding, California. His complaint alleged, among other things, that Atkinson manipulated him into performing unpaid work at her home and contacted one of his employers to spread allegedly false accusations damaging his professional reputation. The complaint did not allege that Atkinson's conduct or property involved in the action was located in the Southern District of Florida.

PROCEDURAL HISTORY

Stanley Abler filed suit in the Southern District of Florida asserting claims purportedly arising under the Americans with Disabilities Act, federal stalking or cyberstalking law, and state law. He alleged that he resided in Melbourne, Florida, while Atkinson resided in Redding, California, and asserted venue based on his own residence. The court found venue improper in the Southern District of Florida and transferred the case to the Middle District of Florida rather than dismissing it.

DISPOSITION

transferred

REMAND INSTRUCTIONS

The case was transferred to the United States District Court for the Middle District of Florida. The receiving court was left to determine whether Abler could proceed without prepaying fees and whether the case could proceed if in forma pauperis status were granted.

CASES CITED

- Zampa v. JUUL Labs, Inc., No. 18-CV-25005, 2019 WL 1777730, at *5 n.3 (S.D. Fla. Apr. 23, 2019)
- Lipofsky v. N.Y. State Workers Comp. Bd., 861 F.2d 1257, 1258 (11th Cir. 1988)
- Jenkins Brick Co. v. Bremer, 321 F.3d 1366, 1371 (11th Cir. 2003)
- Hemispherx Biopharma, Inc. v. MidSouth Cap., Inc., 669 F. Supp. 2d 1353, 1359 (S.D. Fla.)
- Wilson v. Island Seas Invs., Ltd., 590 F.3d 1264, 1269 (11th Cir. 2009)

OPINION

Abler

PER CURIAM.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-25537-ELFENBEIN

STANLEY ABLER,

Plaintiffs, v.

MEGAN ATKINSON,

Defendant. _____/

ORDER TRANSFERRING CASE1

THIS CAUSE is before the Court on a sua sponte review of the record. On November 24, 2025, Plaintiff Stanley Abler filed this lawsuit against Defendant Megan Atkinson. See ECF No.

[1]. Plaintiff's Complaint appears to assert claims under the Americans with Disabilities Act ("ADA"), the federal statute criminalizing interstate stalking/cyberstalking, and state law. See ECF No. [1] at 2. Plaintiff alleges that he is a citizen of Florida and, more specifically, that he resides in Melbourne. See ECF No. [1] at 1. Plaintiff alleges Defendant is a citizen of California and, more specifically, that she resides in Redding. See ECF No. [1] at 1. Plaintiff asserts this Court has subject-matter jurisdiction under the federal question statute, 28 U.S.C. § 1331, because he asserts claims under the ADA and other federal law; the diversity statute, 28 U.S.C. § 1332, because the parties are citizens of different states; and the supplemental jurisdiction statute, 28 U.S.C. § 1367, because he brings claims under state law. See ECF No. [1] 1 "It is well established that the

undersigned Magistrate Judge has the authority, under 28 U.S.C. 636(b)(1)(A), to dispose of motions to transfer venue, as such a ruling has a non-dispositive effect on the litigation.” *Zampa v. JUUL Labs, Inc.*, No. 18-CV-25005, 2019 WL 1777730, at *5 n.3 (S.D. Fla. Apr. 23, 2019) (citation omitted). at 2. And he asserts that “[v]enue is proper” in this District because Plaintiff “resides here.” See ECF No. [1] at 2. As to Plaintiff’s assertion of venue, the Court disagrees. The federal venue statute gives three instructions about where a party may bring a “civil action.” See 28 U.S.C. § 1391(b). First, the party may file his lawsuit in “a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located.” See 28 U.S.C. § 1391(b)(1). Second, the party may file his lawsuit in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.” See 28 U.S.C. § 1391(b)(2). Third, “if there is no district in which an action may otherwise be brought,” the party may file his lawsuit in “any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.” See 28 U.S.C. § 1391(b)(3). And for “all venue purposes,” a natural person is “deemed to reside in the judicial district in which that person is domiciled.” See 28 U.S.C. § 1391(c)(1). Improper venue is a “waivable defect[],” and a defendant waives her right to object to improper venue if she “files a responsive pleading or” a Federal Rule of Civil Procedure 12 motion “failing to assert” it. See *Lipofsky v. N.Y. State Workers Comp. Bd.*, 861 F.2d 1257, 1258 (11th Cir. 1988). “In the absence of a waiver,” however, “a district court may raise on its own motion an issue of defective venue.” *Id.* And if the party files his lawsuit “in the wrong division or district,” a court “shall dismiss” it or, “if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” See 28 U.S.C. § 1406(a). There are, of course, “some cases in which venue will be proper in two or more districts.” See *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1371 (11th Cir. 2003). But when determining which district or districts are proper for venue purposes, “[o]nly the events that directly give rise to a claim are relevant.” *Id.* “And of the places where the events have taken place, only those locations hosting a ‘substantial part’ of the events are to be considered.” *Id.* (quoting 28 U.S.C. § 1391(a)(2)). Although Plaintiff alleges venue is proper in this District because he “resides here,” see ECF No. [1] at 2, he is mistaken. As his more specific allegations make clear, he resides in Melbourne, see ECF No. [1] at 1, which is in Brevard County, see *City of Melbourne, Fla., About the City of Melbourne*, <https://www.melbourneflorida.org/Government/About-the-City> (last visited Dec. 3, 2025). And Brevard County is in the Middle District of Florida, not the Southern District of Florida. See U.S. Dist. Ct. for the S. Dist. of Fla., *Federal Judicial Districts of Florida*, <https://www.flsd.uscourts.gov/federal-judicial-districts-florida> (last visited Dec. 3, 2025); 28 U.S.C. § 89(b) (“The Middle District comprises the counties of . . . Brevard.”). For those reasons, venue is not proper in this District unless a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred here or a substantial part of property that is the subject of the action is situated here. See 28 U.S.C. § 1391(b)(2). Plaintiff has not alleged anything in the Complaint

that would allow the Court to conclude that Defendant's conduct occurred in this District or that property situated in this District is involved. See generally ECF No. [1]; cf. *Hemispherx Biopharma, Inc. v. MidSouth Cap., Inc.*, 669 F. Supp. 2d 1353, 1359 (S.D. Fla. 2009) ("The focus of a venue inquiry is on the defendant and any actions taken by the defendant."). Accordingly, the Court finds that venue in this District is improper. Because Plaintiff filed his lawsuit in the wrong District, the Court must decide whether to dismiss it or, instead, to transfer it to an appropriate judicial district. See 28 U.S.C. § 1406(a). As courts in this District have recognized, the "interests of justice generally favor transferring a case to the appropriate judicial district rather than dismissing it." *Hemispherx*, 669 F. Supp. 2d at 1359. But a "transferee court must sit within a district in which the case originally could have been brought, both with respect to venue and personal jurisdiction." *Id.* (quotation marks omitted). From the allegations in the Complaint, particularly the assertion that Defendant "manipulat[ed]" Plaintiff into "doing free work on her home" by promising to pay for his travel and pay him for his work time, it appears venue is proper in the Eastern District of California because that is where Defendant resides. See Cnty. of Shasta, Cal., About Shasta Cnty., <https://www.shastacounty.gov/community/page/about-shasta-county> (last visited Dec. 3, 2025) (noting that Redding is in Shasta County); U.S. Dist. Ct. for the E. Dist. of Cal., Jurisdiction and Venue, <https://www.caed.uscourts.gov/caednew/index.cfm/cmecf-e-filing/jurisdiction-and-venue/> (last visited Dec. 3, 2025) (noting that Shasta County is in the Eastern District of California); 28 U.S.C. § 84(b) ("The Eastern District comprises the counties of . . . Shasta."). It is also presumably where her home is located, which makes it the place where a substantial part of the events or omissions giving rise to Plaintiff's claims occurred. See 28 U.S.C. § 1391(b)(2). It is also where a federal district court would assuredly have personal jurisdiction over Defendant. See *Hemispherx*, 669 F. Supp. 2d at 1359; Jud. Branch of Cal., Jurisdiction and Venue: Where to file a case, <https://selfhelp.courts.ca.gov/jurisdiction-and-venue-where-file-case> (last visited Dec. 3, 2025) ("In general, all California superior courts have jurisdiction over a person that lives in California or can be found in California."); Cal. Civ. Proc. Code § 410.10 ("A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."). It also appears that venue is proper in the Middle District of Florida, as Plaintiff alleges Defendant "contacted one of Plaintiff's employer[s] and spread false accusations to damage his professional reputation," see ECF No. [1] at 3, and presumably Plaintiff's employer is located in the same District where Plaintiff resides. See 28 U.S.C. § 1391(b)(2) (noting venue is proper in the judicial district where a substantial part of the events or omissions giving rise to the claims occurred). And Florida's long-arm statute seems to reach far enough to embrace Defendant's alleged conduct. See Fla. Stat. § 48.193(1)(a)2 ("A person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from . . . [c]ommitting a tortious act within this state."). This means a

Florida federal court likely has personal jurisdiction over Defendant. Because it appears that venue is presumably proper in both the Eastern District of California and the Middle District of Florida, the Court has authority to transfer the case to either of those districts. See 28 U.S.C. § 1406(a); *Hemispherx*, 669 F. Supp. 2d at 1359. But considering that, in the related context of a forum non conveniens analysis, a “plaintiff’s choice of forum is entitled to deference, and there is a presumption in favor of a plaintiff’s choice of forum,” *Wilson v. Island Seas Invs., Ltd.*, 590 F.3d 1264, 1269 (11th Cir. 2009), the Court concludes that the Middle District of Florida is the better option. Based on the venue allegations in the Complaint, see ECF No. [1] at 2, it appears that Plaintiff intended to file his lawsuit in the district where he resides, mistakenly filing it in the Southern District of Florida instead of the Middle District of Florida.² Accordingly, it is ORDERED AND ADJUDGED as follows:

1. This case is TRANSFERRED to the United States District Court for the Middle District of Florida. Whether Plaintiff may proceed without prepaying fees, see ECF 2 Of course, if the Middle District of Florida determines it does not have personal jurisdiction under Fla. Stat. § 48.193(1)(a)² or is not a proper venue under 28 U.S.C. § 1391(b)(2), it can transfer the case to the Eastern District of California under 28 U.S.C. § 1406(a).

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No. [3], and whether the case may proceed further if granted in forma pauperis status shall be determined by the receiving court.

2. The Clerk of Court is DIRECTED to CLOSE this case in the Southern District of Florida.

3. The Clerk is DIRECTED to MAIL a copy of this Order to Plaintiff at the address listed below and to enter a Notice of Compliance confirming it has done so. DONE and ORDERED in Chambers in Miami, Florida on December 4, 2025. > f fie =

MARTY FULGUEIRA ELFENBEIN

UNITED STATES MAGISTRATE JUDGE

cc: All Counsel of Record Stanley Abler

13537 US HWY 1

#129 Melbourne, FL 32958

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